

Claimant first spent several days in the orientation class. Claimant acknowledged no physical activities were involved in these classes. Claimant then took a self-defense class, which was described by respondent's director of nursing Debra Wheat as a voluntary class, on October 1, 1993. Claimant began her regular duties as an LPN on October 4, 1993. Claimant spent the next two and a half weeks working in either the infirmary, which involved patient care, or in the clinic, where claimant would be involved in taking vital signs and handing out medications. Claimant testified that, during her entire employment with respondent, she was only involved in lifting or moving a patient on one occasion, that being during the week of October 4, 1993. Claimant testified that, while she did help assist in the showering and moving of that patient, she suffered no injuries and experienced no back pain at that time.

Claimant first began experiencing back pain during the week of October 11, 1993, while working in the "med room" where her responsibilities included handing out medications to the patient inmates. This job required no lifting in excess of the medications that claimant was responsible for handing out. Claimant testified that, at times, she would have to lift entire boxes of medications, which Ms. Wheat described as weighing between 4 and 5 pounds. The remainder of the time, claimant dealt with 5- by 8-inch cards of individual medications with between three and thirty pills per card weighing a few ounces. Claimant testified her back simply started hurting. There was no activity associated with the onset of symptoms.

Claimant's history is significant in that she suffered a back injury while employed as an LPN with the Veterans Administration Hospital in 1986. At the time, claimant was diagnosed with a possible herniated disc at L3-4 on the left with narrowing of the spinal canal on a congenital basis and possible diffuse disc bulging at L4-5. Claimant was treated with conservative care including bed rest and ultimately returned to work as an LPN. Surgery was not required at that time.

Claimant's current symptoms began with no specific incident. However, claimant did testify that the symptoms began at work. Claimant stated that she began limping around October 23, 1993, which was a Saturday, and that several of her coworkers noticed her limping. Claimant, however, failed to identify any of those coworkers with the exception of Judy, whom she identified as being there that day. Claimant never testified that Judy actually saw her limping or that she ever commented to Judy about the limp or the injury.

Claimant first advised Ms. Wheat that she was going to be off work as a result of her back problems on Monday, October 25, 1993. Claimant awoke that morning in severe pain, with the pain in her back and radiating pain down her left leg. She first went to Betty Troutman, D.O., at the emergency room and received pain injections. When she contacted Debra Wheat about being off work that Monday, she did not advise Ms. Wheat that she had suffered any kind of work-related injuries. Ms. Wheat testified that claimant stated she did not believe it was work related because she had been doing no lifting of any kind at work other than carrying the medications and patient charts.

Claimant's condition steadily worsened after leaving work October 24, to the point where she was hospitalized on November 15, 1993, in severe pain. Claimant was diagnosed with a herniated disc at L3-4 and underwent surgery with Paul S. Stein, M.D., on November 22, 1993. The surgery consisted of a discectomy with microdissection at the L3-4 level on the left. Claimant reported significant improvement in her leg pain after the surgery. Claimant underwent physical therapy and was ultimately released to light duty on April 18, 1994.

Claimant returned to work and was performing home patient care with a different employer when, on April 3, 1995, she fell down a flight of stairs at a client's home.

Claimant initially had left hip pain, and then the pain worsened and began radiating into her left lower extremity. Claimant was referred back to Dr. Stein who, after performing tests, diagnosed a large herniated disc at L4-5 with some bulging at L5-S1. Claimant was admitted to the hospital and, on May 26, 1995, underwent a discectomy and partial hemilaminectomy at L4-5. On June 23, 1995, claimant reported to Dr. Stein that she was getting along well postoperatively. Her leg pain was much improved, and she reported her back was feeling much stronger than prior to the surgery. Dr. Stein returned claimant to work on July 5, 1995, with restrictions and instructions to walk regularly and increase work activities as tolerated. On September 8, 1995, Dr. Stein assessed claimant an 8 percent impairment to the body as a whole related to the April 1995 injuries and subsequent surgery.

Prior to the 1995 injury, Dr. Stein was asked his opinion as to whether claimant's problems suffered in 1993 were, in any way, related to her employment with respondent. Dr. Stein, in his March 3, 1994, letter to respondent's attorney, stated he was unable to make any definitive statement about the causation of claimant's symptoms. At his deposition, Dr. Stein testified both that it was possible and that it was probable that claimant's condition may have been related to the 1993 injury. Dr. Stein, after being provided a history of claimant's complaints and work duties with respondent, ultimately testified that he was unable to give a definitive statement regarding what may or may not have caused claimant's condition.

In workers compensation litigation, it is claimant's burden to prove her entitlement to the benefits claimed by a preponderance of the credible evidence. See K.S.A. 44-501 (Furse) or K.S.A. 44-508(g) (Furse).

Claimant is unable to testify with any certainty regarding what, if any, activity caused her problems at work. Claimant can only testify that her back began hurting while standing at work. It is significant that, after leaving work, claimant's condition continued to worsen to the point where she was admitted into the hospital on November 15, 1993. This was despite not having worked for respondent for three weeks.

The Appeals Board finds based upon a review of the credible evidence that claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment with respondent on the dates alleged.

Claimant alleges accidental injury October 13 through October 24, 1993, as a series. Respondent acknowledged claimant talked to Debra Wheat, their director of nursing, on or about October 29, 1993, and advised her that she was filing a workers compensation claim. Had claimant been able to prove that her accidental injury arose out of and in the course of her employment with respondent, this notice to Debra Wheat would have been sufficient under K.S.A. 44-520 (Furse), as it was within 10 days of the alleged date of accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated January 3, 2001, denying claimant benefits for having failed to prove that she suffered accidental injury arising out of and in the course of her employment with respondent on the dates alleged, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2001.

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BOARD MEMBER

c: John C. Nodgaard, Wichita, KS  
Richard A. Boeckman, Great Bend, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director